

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

IN THE OFFICE OF
ADMINISTRATIVE HEARING
15 EHR 07010
15 EHR 08224

CITY OF LENOIR,)
Petitioner,)
v.)
NC DEPARTMENT OF ENVIRONMENTAL)
QUALITY and ENVIRONMENTAL)
MANAGEMENT COMMISSION)
Respondents.)

SETTLEMENT AGREEMENT

The City of Lenoir (“the City”) and the North Carolina Department of Environmental Quality, Division of Water Resources (“DWR”), hereby enter into this Settlement Agreement (“Agreement”) in order to resolve a matter in controversy between them. This matter arose out of the assessment of stipulated penalties, civil penalties and enforcement costs in the amount of twenty-four thousand seven hundred and twenty-seven dollars and seventy-eight cents (\$24,727.78) (“Penalties”). The Penalties assessed between October and December of 2015 were for the following alleged violations: 1) failure of the WWTP, during the month of May, to comply with the interim effluent limitations set forth in the Special Order of Consent (“SOC”) for the City’s Gunpowder Creek Wastewater Treatment Plant (“WWTP”) for Ammonia Nitrogen; 2) failure of the WWTP, during the month of June, to comply with the interim effluent limitations set forth in the SOC for Ammonia Nitrogen and Total Suspended Solids; 3) failure of the WWTP, during the month of July,

to comply with the interim effluent limitations set forth in the SOC for Ammonia Nitrogen and Total Suspended Solids; 4) failure of the WWTP, during the month of August, to comply with the interim effluent limitations set forth in the SOC for Ammonia Nitrogen; 5) failure of the WWTP, during the month of June, to comply with effluent limitations set forth in the WWTP's National Pollution Discharge Elimination System ("NPDES") Permit for Biochemical Oxygen Demand and Fecal Coliform; and 6) failure of the WWTP, during the month of July, to comply with effluent limitations set forth in the City's NPDES permit for Fecal Coliform.

It is understood that the following Agreement shall not take effect unless and until approved by the Lenoir City Council. This Agreement will be void if not approved by the Lenoir City Council within ninety (90) days of the date the Agreement is signed. The undersigned representatives of the City agree to recommend approval of the following Agreement to the Lenoir City Council.

Without any hearing of fact or law in the above-styled matter, and subject to approval by the Lenoir City Council, IT IS THEREFORE AGREED BY THE PARTIES THAT:

1. In order to avoid the cost and delay of further litigation, the parties have entered into this Agreement and have agreed that all parties have been correctly designated and that there is no question as to misjoinder or nonjoinder.
2. The City shall pay DWR ten thousand six-hundred and fifty-nine dollars and twenty-six cents (\$10,659.26) ("Settlement Amount") in full settlement of the Penalties. The Settlement Amount shall be made in a lump sum payment due within thirty (30) calendar days of the approval by the Lenoir City Council. The payment shall be made by check and made payable to the "North Carolina Department of Environmental Quality" (or to "NC DEQ"), and delivered to the following address:

Hill Davis
Assistant Attorney General
N.C. Department of Justice
Environmental Division
P.O. Box 629
Raleigh North Carolina 27602

3. The City will do each of the following:

- a. Within six (6) months of the date this agreement is approved by the Lenoir City Council, complete mapping of the wastewater collection system, as specified in the first and last sentences of Section III.3 of the wastewater collection system permit. In addition, this map shall be available in a GIS overlay format and will be accessible in the field, either in paper or electronic format.
- b. Within ninety (90) days of the date this agreement is approved by the Lenoir City Council, submit a plan for preventing and responding to pass through or interference to DWR for approval. Upon request, DWR shall provide guidance to the City on an appropriate plan. The City shall implement this plan as soon as it is approved.
- c. Provide twice yearly submissions of the records and documentation required in the wastewater collection system permit, permit no. WQCS00035, and as identified in the inspection report authored by Linda Wiggs and provided to the City by letter dated September 23, 2014, on June 30 and December 31 of each year, until DWR's next inspection of the City's collection system;
- d. Within ninety (90) days of the date this Agreement is signed, provide the most recent version of the capital improvement plan as required in the wastewater collection system permit, permit no. WQCS00035;

- e. Within fourteen (14) days of adoption of this Agreement by the Lenoir City Council, enter voluntary dismissal with prejudice of the City's Petitions for Contested Case Hearing in the above captioned matters, 15 EHR 07010 and 15 EHR 08224.
- 4. In the event the City fails to comply with any of the conditions of this Agreement, the City shall immediately owe DWR the entire amount of the Penalties, i.e., twenty-four thousand seven hundred and twenty-seven dollars and seventy-eight cents (\$24,727.78), less any payments already made. The City authorizes DWR to file a Confessed Judgment for that amount in superior court.
- 5. The City expressly agrees that by entering into this Agreement, the City waives, for purposes of collection of any sums due hereunder, any and all defenses to the Penalties, and that the issues in any action to collect said Penalties will be limited to the City's compliance with the terms of this Agreement.
- 6. Nothing in this Agreement shall restrict the right of DWR to inspect or take enforcement action against the City for any new or subsequent violations of the water quality statutes, the relevant rules promulgated thereunder, or any permits held by the City. Similarly, nothing in this Agreement shall restrict the right of the City to contest a new or subsequent enforcement action.
- 7. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole agreement between them.

8. This Agreement shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto.
9. This Agreement shall be binding upon the parties and is entered into knowingly, intelligently, and voluntarily.

**RESPONDENT NORTH CAROLINA DEPARTMENT OF ENVIRONMENT QUALITY,
DIVISION OF WATER RESOURCES**

By:

John Hennessy

JOHN HENNESSY

Supervisor of Compliance and Expedited Permitting Unit,
North Carolina Department of Environmental Quality, Division of Water Resources

Date: March 16, 2016

PETITIONER CITY OF LENOIR

By:

Richard L. Thomas

William Clarke

Date: March 16, 2016